



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/2632

Re: Property at 55 Coodham Place, Kilwinning, KA13 6SG (“the Property”)

Parties:

Mrs Janet Robertson, Mr Francis Robertson, 1 Auchenharvie Drive, Stevenston, Ayrshire, KA20 4AE; 1 Auchenharvie Place, Stevenston, Ayrshire, KA20 4AE (“the Applicant”)

Miss Chloe Logan, 55 Coodham Place, Kilwinning, KA13 6SG (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application included: -
 - a. Tenancy agreement,
 - b. Notice to leave with evidence of service.
 - c. Section 11 Notice with evidence of service
 - d. Letter from legal agent confirming instructed to act in sale of property.
3. The applicants appeared at the case management discussion on 3 March 2025. There was no appearance from the respondent. There was evidence of service of the application on the respondent and the tribunal were therefore prepared to proceed in her absence.

Discussion

4. The applicant confirmed that they were seeking an order for eviction.
5. They advised that they had spoken to the tenant that they wanted to sell the property. The applicants advised that the tenant had spoken to the local authority. She had been told her that an eviction order, would need to be granted before they would be able to offer her secure accommodation.
6. After the papers had been served by the sheriff officers, the tenant had been in touch, and they had advised her to seek legal advice about the application papers. The last contact they had had with the tenant was at the end of January when she had received the application papers from the sheriff officers. The tenant is on universal credit. The tenant had one dependent living with her, a 2 year old child. They understood she wished to get a council house. They believed she wanted this order to be granted.
7. The applicants advised that they wanted to sell the property. Mr Robertson was 69 years old. They had three properties which they rented. He was beginning to find it increasingly difficult to manage the maintenance and repair

responsibilities. Mr Robertson did this work himself currently. They intended to sell all of the properties, one per year.

8. They had bought the properties originally, so that Mrs Robertson could retire early, and this had been her income. Mrs Robertson was now receiving her own pension and therefore they no longer required the rental income.
9. The applicants advised the property is a two-bedroom tenancy. They believed there would be other available council houses in the local area suitable for the tenant.
10. The applicant advised if the tribunal refused to grant the order, she wasn't sure what they would do. She advised that these proceedings had caused anxiety and stress to Mr Robertson. He was anxious about what would happen if he had to carry on maintaining the properties.

Findings in Fact

11. The Tribunal found the following facts established: -
12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 29 July 2019.
13. The tenant is Chloe Logan.
14. The landlord is Frances Robertson and Janet Robertson
15. The property is 55 Coodham Place, Kilwinning.
16. There was submitted a notice to leave dated 29 February 2024, stating that an application would not be made until 31 May 2024. It sought eviction under ground 1 intention to sell. The notice to leave had been served by recorded delivery. There was evidence of service.
17. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property.
18. There was a letter from legal agents dated 3 July 2024 confirming that they had been instructed by the landlord to sell the property.

19. The landlord intended to sell the house.
20. The tenant is on universal credit.
21. The tenant had one dependent living with her, a 2 year old child.
22. The landlords advised that the tenant wished to get a council house.
23. Mr Robertson was 69 years old. The landlords rented out three properties. Mr Robertson was beginning to find it increasingly difficult to manage the maintenance and repair responsibilities.
24. The landlords had bought the properties so that Mrs Robertson could retire early, and this had been her income. Mrs Robertson was now receiving her own pension and therefore they no longer required the rental income.

Reasons for Decision

25. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in Schedule 3 of the Act applies.
26. The grounds which the Applicant seeks eviction under are grounds 1. Ground 1 is in the following terms: -

1 Landlord intends to sell.

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal [may] ² find that the ground named by subparagraph (1) applies if the landlord—

(a) is entitled to sell the let property, [...] ³

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it [, and] ⁴

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.]

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

27. The applicants appeared. The respondent did not appear. The landlords advised that they bought the property as an income source, but now wished to sell it. They no longer needed the income source, as both landlords were now receiving their pensions. The landlord provided evidence of their intention to sell the property. If the order is granted it appears to the tribunal the property will be sold. We find that the application meets the tests set out in ground 1.

28. The tribunal was then required to consider if it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction.

29. In deciding to grant the order for eviction we have considered and weighed up the different factors before us.

30. We place weight on the fact that the landlords wish to retire from the property rental business. The landlords had bought the properties so that Mrs Robertson could retire early, and this had been her income. Mrs Robertson was now receiving her own pension and therefore they no longer required the rental income. Mr Robertson was 69 years old and was finding it increasingly difficult to manage the maintenance and repair responsibilities for the properties. He currently did the maintenance work himself. They told us that they were selling the three properties, one a year and this was the first one to be sold.

31. They also told us that the tenant had spoken to the local authority. She had been told her that an eviction order, would need to be granted before they would be able to offer her secure accommodation. They understood she wished to get a council house. They believed she wanted this order to be granted. We also place weight on this as a reason why it would be reasonable to grant the order.
32. Factors against the order being granted are that the tenant had one dependent living with her, a 2 year old child. We heard no evidence that she was in any way a difficult tenant.
33. Balancing these factors, we are prepared in this case to grant the order for eviction as we consider the right to retire, and the fact that the tenant would like to obtain an eviction order to support her application for a secure tenancy outweigh the fact that the tenant has a dependent child and there is no evidence that she is a poor tenant.

Decision

34. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Melanie Barbour

3 March 2025

Legal Member/Chair

Date